

In the Matter of
KIRBY KEITH GORDON,
a former Director,
COMMERCIAL PACIFIC BANK, F.S.B.,
Santa Cruz, California.

Dated: March 31, 1997

Gordon Stipulation

of the OTS, except as to Jurisdiction in paragraph 1 below, which is expressly admitted, hereby stipulates and agrees to the following terms:

1. Jurisdiction.

(a) Commercial Pacific is a "savings association" within the meaning of 12 U.S.C. § 1813(b) and 12 U.S.C. § 1462(4). Accordingly, it is an "insured depository institution" as that term is defined in 12 U.S.C. § 1813(c).

(b) GORDON, as a former Director of Commercial Pacific, is an "institution-affiliated party" as that term is defined in 12 U.S.C. § 1813(u)(1), having served in such capacity within six years of the date hereof (see 12 U.S.C. § 1818(i)(3)).

(c) Pursuant to 12 U.S.C. § 1813(q), the OTS is the "appropriate Federal Banking agency" to maintain an enforcement proceeding against a savings association and/or its institution-affiliated parties. Therefore, GORDON is subject to the authority of the OTS to initiate and maintain a prohibition and cease and desist proceeding against him pursuant to 12 U.S.C. §§ 1818(e) and 1818(b). The Director of the OTS has delegated to the Regional Directors of the OTS or their designees ("Regional Director") the authority to issue prohibition and cease and desist orders where the individual has consented to the issuance of the Order.

2. OTS Findings of Fact.

The OTS finds that GORDON violated laws, rules, and regulations, engaged in unsafe and unsound practices, and breached

his fiduciary duties when he arranged six loans from Commercial Pacific for multiple borrowers but failed to disclose his personal interests in the transactions to the Board at Commercial Pacific, prior to the funding of the loans.

GORDON's misconduct resulted in direct financial benefit or other gain to him and also unjustly enriched him. GORDON's misconduct has also resulted in loss to the institution on one of the six loans to date.

GORDON's misconduct demonstrated willful or continuing disregard for the safety and soundness of Commercial Pacific and reckless disregard for applicable laws, rules, and regulations. As a director, attorney, and sophisticated businessman, GORDON failed to inform the Board at Commercial Pacific, prior to the funding of the loans, about his personal interests in the six loans or the direct benefits he was to receive when the loans funded.

3. Consent.

GORDON consents to the issuance by the OTS of the accompanying Order of Prohibition and Order to Cease and Desist for Affirmative Relief ("Order"). He further agrees to comply with its terms upon issuance and stipulates that the Order complies with all requirements of the law.

4. Finality.

The Order is issued by the OTS under 12 U.S.C. §§ 1818(e) and 1818(b). Upon its issuance by the Regional Director it shall be a

final order, effective and fully enforceable by the OTS under the provisions of 12 U.S.C. § 1818(i).

5. Waivers.

GORDON waives the following:

(a) The right to be served with a written notice of the OTS's charges against him (see 12 U.S.C. §§ 1818(e) and 1818(b));

(b) The right to an administrative hearing of the OTS's charges against him (see 12 U.S.C. §§ 1818(e) and 1818(b));

(c) The right to seek judicial review of the Order, including, without limitation, any such right provided by Section 8(h) of the FDIC, 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order; and

(d) Any and all claims for the award of fees, costs or expenses related to this OTS enforcement matter and/or the Order, whether arising under common law or under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412.

6. Payment of Restitution.

(a) GORDON shall pay Thirty Thousand Dollars (\$30,000) to Commercial Pacific, by making twenty-four (24) payments of \$1,250 each to Commercial Pacific, commencing on the later of March 31, 1997, or ten (10) days from the Trigger Date, and thereafter payable on the last day of each month ("Due Date") until all twenty-four (24) payments have been paid in full. The entire unpaid balance of the restitution obligation imposed by this paragraph shall become immediately due and payable in the event

that GORDON shall fail to make a required payment within ten (10) days of the required Due Date.

(b) For purposes of this Stipulation, "Trigger Date" means the date on which the automatic stay of the U.S. Bankruptcy Court, pursuant to Bankruptcy Code § 362(a), ceases to be effective as to the OTS in the bankruptcy proceedings commenced by GORDON.

(c) Monthly payments shall be sent to Commercial Pacific at the following address:

James Wakeman
President
Commercial Pacific Bank, F.S.B.
1000 41st Street
Santa Cruz, CA 95062

A copy of each check also shall be simultaneously sent to the OTS at the following address:

James A. Hendriksen
Regional Enforcement Counsel
Office of Thrift Supervision
Post Office Box 7165
San Francisco, CA 94120

7. Bankruptcy Implications.

In any bankruptcy proceeding in which it is or may be contended that GORDON's obligation to pay restitution pursuant to the Stipulation and the Order is subject to discharge, GORDON agrees that neither he nor his representatives will in any manner contest, oppose or resist OTS's assertions that the obligation to make those payments is nondischargeable in bankruptcy under any circumstances, pursuant to any of the provisions of the United States Bankruptcy Code. GORDON acknowledges and agrees that his

obligation to make payments pursuant to this Stipulation and Order is nondischargeable under 11 U.S.C. §§ 727, 1141, 1228 or 1328(b), and waives any right to seek discharge of such obligations through bankruptcy.

8. Indemnification.

GORDON represents that he has not received, directly or indirectly, any sums from Commercial Pacific (or any holding companies, affiliates, subsidiaries, service corporations, or successors thereof), for the purpose of indemnifying or reimbursing him for any expense incurred by him in connection with this OTS Investigation.

GORDON shall neither cause nor permit Commercial Pacific (or any holding companies, affiliates, subsidiaries, service corporations, or successors thereof) to incur, directly or indirectly, any expense for any legal or other professional expenses incurred relative to this OTS Investigation or the negotiation and issuance of the Order, nor obtain any indemnification (or other reimbursement) from Commercial Pacific (or any holding companies, affiliates, subsidiaries, service corporations, or successors thereof) with respect to such expenses. In the event that any such payments are received by or on behalf of GORDON in connection with this action, GORDON agrees to promptly notify the OTS of the receipt of such payments and to return such payments without delay to Commercial Pacific (or any holding

companies, affiliates, subsidiaries, service corporations, or successors thereof).

9. Other Government Actions Not Affected.

(a) GORDON acknowledges and agrees that the consent to the entry of the Order are for the purposes of resolving this OTS enforcement matter only and does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of GORDON that arise pursuant to this action or otherwise, and that may be or have been brought by any other government entity other than the OTS.

(b) By signing this Stipulation, GORDON agrees that he will not assert this proceeding, his payment of restitution, his consent to the entry of the Order, and/or the entry of the Order, as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other federal or state governmental agency.

10. Acknowledgment of Criminal Sanctions.

Upon issuance of the Order, GORDON will be a person "subject to an order under subsection (e)" for purposes of 12 U.S.C. § 1818(j), and acknowledges that that section sets forth criminal penalties against any such persons who knowingly participates directly or indirectly in any manner in an activity specifically prohibited by the Order, including any activity prohibited by 12 U.S.C. § 1818(e)(6).

11. Miscellaneous.

(a) The construction and validity of this Stipulation and the Order shall be governed by the laws of the United States of America.

(b) All references to the OTS in this Stipulation and the Order shall also include any of the OTS's predecessors, successors, and assignees.

(c) The section and topic headings in this Stipulation and in the Order are for convenience only, and such headings shall not effect the interpretation of this Stipulation and the Order.

(d) The Stipulation and the Order shall remain in effect until terminated, modified, or suspended in writing by the OTS, acting through its Regional Director.


WHEREFORE, KIRBY K. GORDON executes this Stipulation intending to be legally bound hereby.

By:


Kirby Keith Gordon

Accepted by:

OFFICE OF THRIFT SUPERVISION


John F. Robinson
Regional Director
West Region

Dated: March 26, 1997

Dated: March 31, 1997

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In the Matter of

KIRBY KEITH GORDON,
a former Director,

COMMERCIAL PACIFIC BANK, F.S.B.,
Santa Cruz, California.

OTS Order No.: SF-97-011

Dated: March 31, 1997

**ORDER OF PROHIBITION AND
ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF**

WHEREAS, Kirby Keith Gordon ("GORDON"), as a former Director of Commercial Pacific Bank, F.S.B., has executed the attached Stipulation and Consent to the Issuance of an Order of Prohibition and Order to Cease and Desist for Affirmative Relief ("Stipulation") on March 26, 1997; and

WHEREAS, GORDON, by his execution of the Stipulation, has consented and agreed to the issuance of the Order of Prohibition and Order to Cease and Desist for Affirmative Relief ("Order") by the Office of Thrift Supervision ("OTS"), pursuant to 12 U.S.C. §§ 1818(e) and 1818(b);

NOW THEREFORE, IT IS ORDERED that:

1. GORDON, except upon the prior written consent of the OTS (acting through or its authorized representative) and any other "appropriate Federal financial institutions regulatory agency," for purposes of 12 U.S.C. § 1818(e)(7)(ii), shall not:

(a) hold any office in, or participate in any manner of the conduct of the affairs of, any institution or agency specified in 12 U.S.C. § 1818(e)(7)(A), including, but not limited to:

- (i) any insured depository institution, e.g., savings and loan associations, savings banks, national banks, trust companies, and other banking institutions;
- (ii) any institution treated as an insured bank under 12 U.S.C. §§ 1818(b)(3) and 1818(b)(4), or as a savings association under 12 U.S.C. § 1818(b)(9), e.g., subsidiaries and holding companies of banks or savings associations;
- (iii) any insured credit union under 12 U.S.C. § 1781 et seq.;
- (iv) any institution chartered under 12 U.S.C. § 2001 et seq.;
- (v) any appropriate Federal depository institution regulatory agency, within the meaning of 12 U.S.C. § 1818(e)(7)(A)(v); and
- (vi) the Federal Housing Finance Board and any Federal Home Loan Bank.

(b) solicit, procure, transfer, attempt to transfer, vote or attempt any proxy, consent or authorization with respect to any voting rights in any institution described in 12 U.S.C. § 1818(e)(7)(A); and

(c) violate any voting agreement previously approved by the "appropriate Federal banking agency" within the meaning of 12 U.S.C. § 1818(q); or

(d) vote for a director, or serve or act as an "institution-affiliated party," as that term is defined at 12 U.S.C. § 1813(u), e.g., a director, officer, employee, controlling stockholder of, or agency for, an insured depository institution.

IT IS FURTHER ORDERED THAT:

2. (a) GORDON shall pay Thirty Thousand Dollars (\$30,000) to Commercial Pacific, by making twenty-four (24) payments of \$1,250 each to Commercial Pacific, commencing on the later of March 31, 1997, or ten (10) days from the Trigger Date, and thereafter payable on the last day of each month ("Due Date") until all twenty-four (24) payments have been paid in full. The entire unpaid balance of the restitution obligation imposed by this paragraph shall become immediately due and payable in the event that GORDON shall fail to make a required payment within ten (10) days of the required Due Date.

(b) For purposes of this Order, "Trigger Date" means the date on which the automatic stay of the U.S. Bankruptcy Court, pursuant to Bankruptcy Code § 362(a), ceases to be effective as to the OTS in the bankruptcy proceedings commenced by GORDON.

(c) Monthly payments shall be sent to Commercial Pacific at the following address:

James Wakeman
President
Commercial Pacific Bank, F.S.B.
1000 41st Street
Santa Cruz, CA 95062

A copy of each check also shall be simultaneously sent to the OTS
at the following address:

James A. Hendriksen
Regional Enforcement Counsel
Office of Thrift Supervision
Post Office Box 7165
San Francisco, CA 94120

3. The Stipulation is made a part hereof and is incorporated
herein by this reference.

4. This Order is subject to the provisions of 12 U.S.C.
§ 1818(j), and shall become effective on the date it is issued, as
shown in the caption above.

5. GORDON shall promptly respond to any request from the OTS
for documents that the OTS reasonably requests to demonstrate
compliance with this Order.


6. All words or terms used in this Order or attached
Stipulation, for which meanings are not specified or otherwise
provided for by the provisions of this Order, shall have meanings
as defined in Chapter V of Title 12 of the Code of Federal
Regulations, the Home Owners' Loan Act, the FDIA and FIRREA.

7. This Order is and shall become effective on the date it
is issued, as shown in the caption thereof. This Order shall
remain in effect until it is terminated, modified or suspended,
which may occur only by formal action of the OTS, acting by and

through its Director, Regional Director, or other authorized representative.

OFFICE OF THRIFT SUPERVISION

By:


John F. Robinson
Regional Director
West Region

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